IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:23-11-2006

Coram:

The Honourable Mr. Justice Elipe DHARMA RAO
and
The Honourable Ms. Justice K. SUGUNA

W.P. No.23277 of 2003

R. Azhagesan .... Petitioner

:versus:

1. The Deputy Inspector General
of Prisons, Madurai Range
Madurai

2. Raman
Deputy Inspector General of Police
Madurai Range, Madurai

3. The Registrar
Tamil Nadu Administrative Tribunal
Chennai 600 106 .... Respondents

Petition under Art.226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records of the respondents, especially the third respondent relating to the order made in O.A. No.1655/2001 dated 21-1-2003 and quash the same as null and void, illegal and invalid and consequently direct the respondents 1 and 2 to reinstate the petitioner in service with all service and monetary benefits besides regulating his suspension period as duty period upholding his entitlement for backwages upto the date of reinstatement.

WEB COPY

For Petitioner :: Mr. A. Amalraj

For Respondents :: Mr. C. Kalaiselvam
Addl. Govt. Pleader

https://hcservices.ecourts.gov.in/hcservices/

ORDER

Elipe DHARMA RAO, J.

Challenge in this writ petition is to the order dated 21-1-2003 passed by the Tamil Nadu Administrative Tribunal (in short 'the Tribunal') by which the Tribunal has dismissed the original application filed by the petitioner herein and upheld the order passed by the first respondent dismissing the petitioner from service.

2. Facts, in brief, are as follows: The petitioner, a Warden in the Prison Service, was served with a charge memo dated 29-3-2000 for certain alleged misconducts. In the departmental enquiry, all the charges levelled against the petitioner were proved. The first respondent by his order dated 2-11-2000 dismissed the petitioner from service. Challenging the order of dismissal, the petitioner filed an original application before the Tribunal. The Tribunal dismissed the original application holding that the dismissal of the petitioner from service was legal and proper.

3. Learned counsel for the petitioner submitted that the punishment of dismissal from service is arbitrary, illegal and violative of the principles of natural justice apart from infringement of the rights conferred under Article 311 of the Constitution of India. Learned counsel further submitted that the second respondent was through out exhibiting inimical attitude towards the petitioners. The second respondent has framed so many false charges against the petitioner and issued orders without conducting any proper enquiry. The second respondent, in his capacity as the Deputy Inspector General of Prisons-first respondent, issued the impugned charge memo dated 29-3-2000. The first respondent appointed the Superintendent of Central Prison, Palayamkottai as enquiry officer. In the enquiry, no opportunity of hearing was given to the petitioner and he was not allowed to peruse the documents relied on by the enquiry officer. No witnesses have been examined in the enquiry though the petitioner had furnished the list of witnesses to be examined. Learned counsel further submitted that even assuming that petitioner had made the alleged complaints against the first respondent, the charged levelled against the petitioner were true, since the alleged allegations are with respect to the conduct and functioning of the first respondent, the initiation of the departmental enquiry against the petitioner should have been by the officer higher in rank to the first respondent, but in the present case the first respondent himself had taken the task of initiating the departmental enquiry and appointed the enquiry officer of his choice, who acted as per the directions of the first respondent. By this, the first respondent himself has acted as Judge in his own cause. Learned counsel submitted that the proper course would have been that the matter should have been referred to the Inspector General of Prisons for further action against the petitioner. It was further submitted that even

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

though the petitioner had sought for eighteen documents inclusive of the report given by the Forensic Expert and had also sought to examine nine witnesses including the Forensic Expert, the enquiry officer deliberately denied those documents and also refused to summon the Forensic Expert for cross-examination. The copy of the report submitted by the Forensic Expert was not provided to the petitioner. The punishment of dismissal from service is shockingly disproportionate to the charges levelled against the petitioner. In short, the contention of the learned counsel for the petitioner is that whole enquiry was tainted with bias and mala fide attitude of the second respondent and that there was no enquiry at all in the eye of law.

4. Learned Additional Government Pleader submitted that several anonymous letters were addressed to the higher officials of the Prison Department as well as to the Government making allegations of corruption against the Deputy Inspector Genral of Prisons, Madurai Range, Madurai. To find out the person who authored such letters, the registered post covers and the contents of the letters were analysed with the activities of some of the wardens working in the Central Prison, Madurai and the Sub Jails under its control. Analysis of the words used in the letters and the way of writing coincided with the way of words written and the words often used by the applicant and hence, the Director of Forensic Department, Chennai was requested to examine the false baseless allegation letters, with some of the applications submitted in the office by the applicant to ascertain whether such letters were written by the applicant or not. In the report received from the Director of Forensic Sciences Department it is stated that the documents sent by the respondents were examined carefully and the writings have all been written by one and the same person. The respondent department, therefore, came to the conclusion that it was the petitioner who has written the anonymous letter. Learned counsel further submitted that the past record of the petitioner is not clean and from 1989 to 1999 he has suffered as many as eight punishments, that he was suspended for a period of 224 days and through his service he has availed 1417 days holidays on various grounds, including the period of suspension. When the petitioner was transferred to Sub Jail, Vedasandur on disciplinary grounds on the recommendation of the Superintendent, Central Prison, Madurai, the petitioner attempted to stall the transfer order and even after joining the transferred place, he made all attempts to come back to his original place. Since the appellant was transferred on disciplinary grounds, his requests were not complied with. In the above circumstances, it was evident that writing of anonymous false and baseless petitions by the petitioner was done with the only intention of threatening the superior officers who have refused the unlawful requests of the petitioner and taken action against the petitioner for his unlawful and illegal activities. The petitioner also threatened to commit self-immolation to prevent the superior officers from taking any action against him. Hence, disciplinary action was taken against the petitioner and on the basis of the report submitted by the Enquiry Officer holding the charges framed against the petitioner were proved without any doubt, the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

petitioner was dismissed from service by order dated 2-11-2000 passed by the Deputy Inspector General of Prisons, Madurai Range, Madurai. It was submitted that the enquiry officer acted independently and impartially and had never acted to the tunes of the respondent, as alleged by the petitioner. The petitioner did not cooperate with the enquiry officer and made all attempts to avoid the enquiry. The petitioner was all reasonable opportunity to defend his case. The petitioner was working as last grade servant in the department and it was not for him to point the irregularities or illegal or improper acts, even assuming such activities did occur, about the administration. The petitioner was always in the habit of making anonymous letters containing false and baseless allegations against the superior officers. Learned counsel submitted that the enquiry officer acted on his own without any bias and without any interference from the respondents, and conducted the enquiry and only on the facts of the records available passed an ex parte report after following all the procedures and guidelines as per the relevant rules. Sufficient opportunity was given to the petitioner to defend his case and the petitioner without using the opportunities, avoided the enquiry. Since the petitioner has failed to attend the enquiry, the question of examination of witnesses does not arise. Therefore, the respondents 1 and 2 were fully justified in imposing the punishment of dismissal from service on the petitioner and the Tribunal committed no error in confirming the order passed by the respondents.

5. Heard the learned counsel for the parties and perused the materials made available on record.

6. It is evident from the records that an anonymous letter dated 9-7-1999 by registered post was received by the respondent Department alleging corruption and misconduct against the second respondent officer. Another similar letter dated 9-11-1999 was also received by the respondent Department containing the very same allegations against the very same respondent officer. To found the author of such letters, as per the directions of the Inspector General of Prisons, the registered post covers and the contents of the letters were compared with the writings of some of the wardens working in the Central Prison, Madurai and the Sub Jails under its control in which the writings of the petitioner and the writings appeared on the registered letters appeared to be similar and therefore, those materials were sent to the Forensic Science Department, Chennai to ascertain whether the writings are of one and the same person. In the report submitted by the Director of Forensic Sciences Department it was stated that the writings have all been written by one and the same person. The respondent authorities therefore concluded that it was the petitioner who wrote such anonymous letters against the superior officers of the Department. Therefore, disciplinary action was initiated against the petitioner under Rule 17(b) of the the Tamilnadu Civil Services (Disciplinary and Appeal) Rules. The Superintendent, Central Prison of Palayamkottai was appointed as the enquiry officer. On the basis of the report submitted by the enquiry officer finding the petitioner guilty of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

all the charges levelled against him, the petitioner was dismissed from service by the order dated 2-11-2000 passed by the Deputy Inspector General of Prisons, Madurai Range, Madurai. On the other hand, it is the specific case of the petitioner that he was innocent and that he had not authored such anonymous letters as alleged by the respondent prison authorities. It was also the claim of the petitioner that he was victimized due the personal animosity and ill-will of the second respondent against him. The petitioner also alleged that the enquiry was not fair and proper and in fact there was no enquiry at all as no opportunity was given to him to defend his case in a proper and effective manner.

7. From the above it is clear that the initiation of the disciplinary proceedings against the petitioner was for the reason that he has written several anonymous letters containing allegations against the superior officers of the prison Department. This was done after collecting evidence behind the back of the petitioner and after obtaining the report from the Forensic Department. Therefore, the allegation of the petitioner that there was animosity between the petitioner and the respondent prison authorities is proved. Further, as seen from the enquiry report on more than one occasion when the petitioner had sought for copies of certain documents and perusal of certain document, that was denied to him. From the report of the enquiry officer, it is seen that the petitioner had sought for the copies of eighteen documents including viz. letter containing the report of the Commissioner of Police, Madurai dated 4-12-1999, copy of the signatures, copy of the speciment signatures, etc. and it was replied by the respondent authorities that while copies of certain documents will not be supplied to him, the petitioner may peruse certain documents at the time of enquiry. In fact, petitioner was not given copy of even a single document which he had sought for. Therefore, it is evident from the above that no fair procedure was followed and no reasonable opportunity was given to the petitioner to defend his case in a proper and effective manner. Another circumstance is that though the petitioner sought for cross-examination of certain witnesses, he was denied that opportunity. It is stated in the enquiry report that the persons required by the petitioner for cross-examination cannot be called for since they are considered unnnecessary to the enquiry. It is also pertinent to note that in his letter dated 12-4-2000 the petitioner has denied all the charges levelled against him and also stated that such charges were framed on the basis of bias, dislike, vengeance, etc.

8. In the above circumstances, when the respondent prison authorities wanted to zero in on the author of the anonymous letters and for that purpose when they discretely collected sample writings of the wardens working in the prisons matching with the writings appearing on the registered covers for the purpose of sending them to Forensic Department to get the report and on such collection, when they entertained the suspicion that it could be the petitioner who authored such letters, we are of the view that the respondent prison authorities should have

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

informed the petitioner about the doubt entertained by them and should have taken sample writings of the petitioner by putting him on caution that such sample writings are taken for the purpose of getting report from the Forensic Department to find out the author of the anonymous letters. That was not done in this case. On the other hand, evidence was collected behind the back of the petitioner and the same was used for the purpose of initiating the disciplinary action against him. Further more, when the petitioner demanded the copies of the documents relating to the report of the Forensic Department, the same were not furnished to him. So also, the request of the petitioner to cross-examine the expert was not entertained by the enquiry officer. Secondly, when the petitioner had made the specific allegation of bias, prejudice, ill-will against the second respondent, the second respondent should have referred the matter to some other authority of his equal rank or even to his higher authorities for initiating appropriate action against the petitioner especially so, when the complaints contained in the anonymous letters alleged to have been sent by the petitioner were relating to the conduct of the second respondent. Instead, the second respondent himself has directed disciplinary action against the petitioner and also appointed an enquiry officer of his choice has come under the cloud of bias, prejudice, ill-will, aniomisity, as alleged by the petitioner and by doing so he acted as judge in his own cause. Further, in the present case the appointing authority was appointed as the enquiry officer and on the basis of the report submitted by the enquiry officer, punishment was imposed on the petitioner by the Vice President of Prisons Department, Madurai, who is the appellate authority and, therefore, the petitioner has lost the chance of making an appeal. In ELECTRONICS CORPORATION OF INDIA v. G. MURALIDHAR (2001) 10 SCC 43, the Supreme Court held that the power to impose punishment should not be exercisable by the appellate authority if it results in denial of right of appeal. In PEPSU ROAD TRANSPORT CORPORATION v. LACHHMAN DASS GUPTA AND ANOTHER (2002 [4] SLR 143), the Supreme Court held that if the documents relied upon by the department in establishing the charge have not been given to the delinquent, the conclusion is irresistible that the delinquent had been denied a reasonable opportunity to defend himself in the proceeding and, therefore, the order of punishment of termination is liable to be set aside.

9. Considering the facts and circumstances of the case in the light of the judgments of the Supreme Court cited supra, we are of the considered view that the the order dated 2-11-2000 passed by the first respondent imposing the punishment of dismissal from service is illegal and unsustainable in law. The Tribunal completely went wrong in confirming the order of punishment. We, therefore, set aside the order dated 2-11-2000 passed by the first respondent and also the impugned order dated 21-1-2003 passed by the Tribunal in O.A. No.1655 of 2003 confirming the same.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

10. In the result, the impugned order is set aside and the writ petition is allowed. The respondents concerned are directed to reinstate the petitioner in service forthwith with all service and other attendant benefits, including seniority, etc.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Jai

To:

1. The Deputy Inspector General
   of Prisons, Madurai Range
   Madurai

2. The Registrar
   Tamil Nadu Administrative Tribunal
   Chennai 600 106

1 cc To Mr.A.Amlraj, Advocate, SR.57174.

W.P. No.23277 of 2003

NA(CO)
RVL 30.11.2006

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/